

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| TALEN'S MARINE & FUEL, LLC | § | |
| | § | C.A. No. 3:10-cv-4244 |
| Plaintiff. | § | |
| v. | § | (Pursuant to Rule 9(h) of the |
| | § | Federal Rules of Civil Procedure) |
| M/V FAITH, Official No. 642222, her engines | § | |
| tackle, apparel, furniture, equipment and all | § | |
| other appurtenances, <i>in rem</i> , and her owner | § | |
| FAITH TOWING, INC. and | § | |
| F & S MARINE, LLC, <i>in personam</i> | § | |
| Defendants. | § | ADMIRALTY |

VERIFIED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes plaintiff, Talen's Marine & Fuel, LLC ("Plaintiff" or "Talen's"), who files this Verified Complaint against defendants, M/V FAITH, Official No. 642222, her engines, tackle, apparel, furniture, equipment and all other appurtenances, *in rem* (the "Vessel"), and Faith Towing, Inc. ("Faith") and F&S Marine, LLC ("F&S"), *in personam*, (collectively "Defendants"), and who represents as follows:

JURISDICTION AND VENUE

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears pursuant to 28 U.S.C. § 1333 and is a maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and Rule C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Rule B") and 9 U.S.C. § 8.

2. Venue in this action is properly found in this Honorable Court pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

3. At all times material herein, plaintiff Talen's was and is a business entity organized and existing under the laws of the State of Louisiana with its principal place of business in Lake Arthur, Louisiana. Plaintiff provided oil (bunkers) to the Vessel. Please see attached Exhibit "A" which is a listing of all open invoices for the Vessel. Despite demand, these invoices remain unpaid.

4. Upon information and belief, at all material times, M/V FAITH, *in rem*, was and is a vessel documented under the laws of the United States bearing Official No. 642222, and is presently located at 5200 27TH Street, San Leon, Texas and is now or will be during the pendency of this action on the navigable waters of this District and within the jurisdiction of this Honorable Court.

5. Upon information and belief, at all times material herein, defendant **Faith Towing, Inc.**, is a Louisiana corporation with a principal place of business located at 57 Asphodel Drive, Marrero, Louisiana 70072, and is the owner of the M/V FAITH.

6. Upon information and belief, at all material times herein, defendant **F&S Marine, LLC**, is a Louisiana corporation with a principal place of business located at 57 Asphodel Drive, Marrero, Louisiana 70072 and is the owner, owner *pro hac vice*, ship manager and/or operator of the M/V FAITH.

FACTS

7. From October 2008 through March 2009, Talen's supplied the Vessel with bunkers which constitute necessities for the Vessel and which were provided pursuant to maritime contracts for which Defendants were invoiced and partial payments made.

8. On July 24, 2009, as evidenced by the Notice of Claim of Lien attached as Exhibit

“A” and incorporated herein for all purposes, Talen’s authorized agent filed a lien against the Vessel for unpaid necessities in the amount of \$138,004.27. As evidenced by Exhibit “B”, the General Index or Abstract of Title issued on October 21, 2010, which is attached and incorporated herein for all purposes, Talen’s lien in the principal amount of \$138,004.27 was recorded against the Vessel and assigned Doc ID no. 10802597. Since recordation of the lien, Plaintiff has not received any monies on behalf of Defendants or the Vessel.

9. Presently, Defendants and the Vessel owe to Plaintiff the principal total sum of \$138,004.27. Pursuant to the various invoices, fuel receipts and delivery tickets, interest at a rate of 18% per annum along with a 25% fee for recovery of this debt is due and payable to Plaintiff in addition to the principal sum, which sums continue to accrue. *See* attached Exhibit “C”, Account Summary and example Invoice, Delivery Ticket and Fuel Receipt, all of which are incorporated herein for all purposes.

COUNT I – ACTION AGAINST VESSEL, IN REM – BREACH OF CONTRACT

10. Pursuant to maritime contracts between the Plaintiff and the vessel’s owners and/or charterer’s and/or agents, Plaintiff, on multiple dates from October 2008 through March 2009, provided goods and services to the Vessel, namely, bunkers. Plaintiff has not been paid for those bunkers despite repeated demand. Plaintiff, therefore, pursuant, but not limited to 46 U.S.C. §31341 *et seq.*, possess maritime liens against the Vessel, in the amount of the goods and services that it provided plus all interest, fees and costs, to the total of at least the amount demanded, *infra*.

11. This Court, therefore, should enter judgment against the Vessel, including the vessel’s engines, tackle, freights and apparel as set out in the Demand for Judgment, *infra*.

COUNT II – ACTION AGAINST F&S MARINE, LLC – BREACH OF CONTRACT

12. Defendant F&S Marine, LLC contracted to pay for the bunkers, jointly and severally with the Vessel, but failed to pay for those bunkers and breached its contract(s) with Plaintiff.

13. This Court, therefore, should enter judgment against Defendant F&S Marine, Inc., including the vessel's engines, tackle, freights and apparel as set out in the Demand for Judgment, *infra*.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff respectfully demands judgment and prays as follows:

- A. That summons and process in due form of law issue against **Faith Towing, Inc.** and **F&S Marine, LLC**, individually, compelling them to appear and answer under oath this Verified Complaint;
- B. That summons and process in due form of law issue against **M/V FAITH, Official No. 642222**, her engines, tackle, apparel, furniture, equipment and all other appurtenances, and that all persons having a claim and any interest therein be cited to appear and answer, under oath, all and singular, the matters aforesaid;
- C. That this Court order that a Warrant for Arrest of Vessel issue against **M/V FAITH, Official No. 642222**, her engines, tackle, apparel, furniture, equipment and all other appurtenances, and that this Court, following arrest of the Vessel, have the Vessel sold on Plaintiff's maritime liens to satisfy a judgment in Plaintiff's favor against the Vessel;
- D. That Plaintiff be awarded any and all *custodia legis* expenses it may incur in the arrest of the Vessel;

E. That this Court enter judgment against the Vessel and against F&S Marine, Inc., jointly and severally, in the amount of at least \$213,543.65, plus interest and costs;

Respectfully submitted,

W. SEAN O'NEIL, ATTORNEY AT LAW

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